IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.89 OF 2006

M/s.V.Vedak & Associates & Ors. ...Appellants
Vs.
Radhabai Sudhakar Mahagaonkar ...Respondent

Mr.S.J.Rairkar for the Appellants
None for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 13,2006.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the builders and developers and the Respondent is the flat purchaser. The suit filed by the Respondent-flat purchaser has been decreed by the trial court. An Appeal preferred by the Appellants has been dismissed. The decree passed by the trial court directs the Appellants to take steps in terms of section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of construction, sale, management and transfer) Act, 1963 read with Rule 8 framed under the said Act and to execute the necessary documents in favour of the Respondent. Under the agreement between the Appellants and the Respondent, the respondent was allowed to take possession of the flat which was incomplete. The construction of the flat was allowed to be completed by a third party. According to the case of the Respondent, balance amount of price payable by the respondent towards the suit flat was to be adjusted against the cost of completion of construction of the flat. The balance amount of priceis Rs.9,100/-. The trial court

passed a decree in the sum of Rs.48,614/- with interest at the rate of 6% p.a.

2. The learned Advocate for the Appellants submitted that decree in terms of clause (2) of the operative part of the decree could not have been passed as the provisions of the said Act of 1963 are not applicable to the city of Lonavala wherein the suit flat is located. He submitted that no specific notification has been issued under section 1 of the said Act of 1963 for applying the provisions of the said Act to Lonavala. He invited my attention to the ground to that effect in the Memorandum of Appeal. He submitted that there is no evidence to show that the Respondent-flat purchaser actually paid any amount to the contractor Mr.Bendke who allegedly completed the construction of the flat and therefore, money decree could not have been passed.

3. I have considered the submissions. Perusal of the Judgment of the Appellate Court shows that the first contention raised by the Appellants in this Second Appeal was not at all raised at the time of hearing of the Appeal. There is no ground in the Second Appeal to the effect that the said contention was raised and was not decided. As the said contention was not raised at the time of hearing of the Appeal, the Appellate Court was not under any obligation to consider it merely because a ground to that effect was taken

in the Memorandum of Appeal. If such objection would have been specifically raised, opportunity could have been given to the Appellants to deal with the said contention. Therefore, there is no merit in the said contention. Without raising the said factual contention in the first Appellate court, it is not open for the Appellants for the first time to raise the said contention in the Second Appeal. The effect of clause (2) of the impugned decree is that necessary steps will have to be taken by the Appellants who are the professional builders and developers to form a company or association of the flat purchasers as per the provisions of the said Act of 1963.

4. So far as the second submission is concerned, the Courts below have relied upon the agreement at Exh.132 which is entered into by the respondent and the contractor. the cost of completing construction has been quantified in the said agreement. The evidence on record shows that the construction of the flat was not completed by the Appellants and the construction was completed by the contractor. The Courts below have deducted a sum of Rs.9,100/- payable by the Respondent towards the balance price of the flat while passing the money decree. There is a concurrent finding of fact that the the Appellants are liable to pay the amount spent on cost of completing the incomplete flat to the Respondent.

5. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.